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Filed : March 2, 2004

### REMARKS

Claims 1-6, 8-10, and 12-37 remain pending in the present application, Claims 1, 6, and 31 having been amended, and 22-30, 33, 35, and 36 having been withdrawn from consideration. The claims set forth above include marking to show the changes made by way of the present amendment, deletions being in ~~strikeout~~ or ~~[[double brackets]]~~ and additions being underlined.

Initially, Applicants would like to thank Examiner Phan for the courteous interview extended to Applicants' counsel, Michael A. Guilian, on March 1, 2006. During the interview, Applicants' counsel pointed out that the Seto and Hamm references do not teach or suggest the off-road vehicles, including their intake systems, recited in the presently pending claims. In accordance with the interview, Applicants have amended the claims along the lines discussed during the interview, which the Examiner indicated would overcome the outstanding rejections. The substance of the interview is further reflected by the comments set forth below with regard to the specific outstanding rejections.

#### Election Of Species

Applicants provisionally elect Species I should no generic claim be held allowable. Applicants identify Claims 1-4, 6, 8-10, 12-21, 31-32, 34, and 37 as being directed to an off-road vehicle, an example of which is illustrated in Figures 1-5, which is readable on Species I.

However, the present election is being made with traverse. Applicant submits that it is well established that:

If the search and examination of an entire application can be made without **serious burden**, the examiner **must** examine it on the merits, **even though it includes claims to independent or distinct inventions**.

M.P.E.P. § 803 (emphasis added).

Applicants wish to point out that all of the presently pending claims (except Claim 37) were subject to examination and treated on their merits in the Final Office Action dated September 22, 2005. Thus, Applicants submit that because these claims were already treated on their merits and thus subject to a search, the continued examination of these claims cannot present the "serious burden" required by MPEP § 803. Applicants therefore submit that examination of all of the presently pending claims should continue.

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Applicants would thus like to note that although Claims 22-30, 33, 35, and 36 are indicated as being withdrawn from consideration above, the outstanding rejections of these claims are addressed below.

**Seto Does Not Anticipate Claims 1-4, 6-12, 15-21, 31-32 and 34**

Claims 1-4, 6-12, 15-21, 31-32 and 34 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,533,060 issued to Seto. Applicant respectfully traverses the present rejection. However, in order to expedite prosecution of the present application, Applicant has amended Claims 1, 6, and 31 along the lines discussed during the interview which the Examiner agreed would overcome the outstanding rejections. However, Applicants expressly reserve the right to further prosecute the original version of Claims 1-37 through continuation practice.

During the interview with regard to the rejection of Claim 1, Applicants' counsel pointed out that Claim 1 recites an off-road vehicle having an air induction system that includes an inlet at a location above an uppermost surface of the wheels, a portion of the intake system extending from the inlet to a position below the uppermost surface of the wheels, then extending to the engine to a position above the uppermost surface of the wheels. The advantage of such a shape helps prevent water from being drawn into the engine.

With regard to the Seto reference, Applicants' counsel pointed out, as shown in Figure 1 of Seto, the intake system includes an air inlet device 90 that extends generally directly downwardly to the engine. Thus, the Seto reference does not teach an off-road vehicle with an intake system that has an inlet disposed above an upper surface of the wheels, extends to a position below the uppermost surface of the wheels, then rises back to a position above the uppermost surface of the wheels before leading to the engine.

Thus, as discussed during the interview, Applicants submit that Claim 1 clearly and nonobviously defines over the Seto reference.

With regard to the outstanding rejection of Claim 6, as discussed during the interview, Claim 6 recites an air cleaner disposed below a central portion of the hood and above the floorboard, the engine being disposed on a second portion of the frame, the second portion being spaced apart from the first portion, a third portion of the frame extending between the first and

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second portions, the third portion including a floorboard, and at least a portion of the air delivery conduit extending below the floorboard, the intake port being disposed above the floorboard.

However, as discussed during the interview, the Seto reference does not teach any configuration of an air intake system for an off-road vehicle. Thus, Applicants submit that Claim 6 clearly and nonobviously defines over the Seto reference.

Further, as discussed during the interview, Claim 31 recites, among other recitations, an air intake system arranged to supply air to the engine for combustion, the air intake system comprising an air cleaner configured to configure the air, the seat being disposed in a fore to aft direction on the vehicle such that the air cleaner lies forward of the seat and at least a portion of the engine lies behind the seat.

As additionally discussed during the interview, no portion of the engine of the Seto reference lies behind the seat. Rather, at most, a portion of the engine of the Seto reference is beneath the seat 52.

This distinction is further illustrated with reference to Figure 1 of the present application in which the air cleaner unit 182 is disposed forward from the seat 66 while at least a portion of the engine 142 is disposed behind the seat 66. Thus, Applicants submit that Claim 31 clearly and nonobviously defines over the Seto reference. Additionally, Applicants submit that Claims 2-4, 6-12, 15-21, 32, and 34 also define over the Seto reference, not only because they depend from one of Claims 1, 6, or 31, but also on their own merit.

**The Proposed Combination of Seto/Hamm Does Not Make Claims 5, 13-14, 22-30, 33, and 35-36 Obvious**

Claims 5, 13-14, 22-30, 33, and 35-36 stand rejected under 35 U.S.C. § 103(a) as being obvious over Seto in view of U.S. Patent No. 6,582,004 issued to Hamm. Applicant expressly traverses the present rejection.

With regard to the rejection of Claims 5, 13-14 and 33, Applicants submit that, as noted above, Applicants believe that Claims 1, 6, and 31 clearly and nonobviously define over the Seto reference and thus the outstanding rejections of those claims have been overcome. Additionally, Applicants submit that Claims 5, 13-14 and 33 also define over the applied references, not only because they depend from one of Claims 1, 6, or 31, but also on their own merit.

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With regard to the rejection of Claims 22-30 and 35-36, as discussed during the interview, Claim 22 recites, among other recitations, "an air intake system arranged to supply air to the engine for combustion, the air intake system comprising an air cleaner configured to clean the air, at least a portion of the air cleaner is positioned between the seat assemblies."

As noted during the interview, the Hamm reference fails to teach or provide any suggestion that the air cleaner of its engine should be positioned between the seats. In fact, there is no discussion whatsoever in the Hamm reference as to the location of any components of the engine. It might occur to one of ordinary skill in the art that the engine of the Hamm off-road vehicle is disposed beneath the hood on the front-end of the vehicle generally between the front wheels 14. Thus, if one were to substitute the engine of the Seto reference into the off-road vehicle of the Hamm reference, it is not necessarily true that the air cleaner would be between the seats. Rather, there are numerous possibilities as to where the air cleaner of the Seto reference might be disposed in the off-road vehicle of Hamm.

In contrast, the nonlimiting embodiment of Figure 10 illustrates an arrangement in which an air cleaner unit 182A is disposed between the seats 68. As discussed during the interview, this position provides further protection for the air cleaning unit 182A.

Thus, Applicants submit that Claim 22 clearly and nonobviously defines over the Seto and Hamm references. Additionally, Applicants submit that Claims 23-30 and 35-36 also define over the Seto and Hamm references, not only because they depend from Claim 22, but also on their own merit.

### **Conclusion**

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped

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issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Respectfully submitted,

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